/10 cont'd/

Ya-nan	5 to 6	Ch'en
San-wei	4	Shih
Mao-shih	8	P'an
Hsien-yün	8	Huang
Nan-shu	5	Liao
Ch'uang-wen	10	Kung
Erh-shu	5	- -
K'an-tsao	7	Shih
Fan-shih	7	P'an

/11/ According to what Mr. Yang Tsung-yao, employed by the Pao-t'ing district government, told me, there were Miao t'uan /groups/ (each t'uan comprises a certain number of villages) and villages in Pao-t'ing district, as follows:

Chia-tung T'uan
Ho-shui T'uan
Nan-mou T'uan
Chung-p'ing-tzŭ village
Peng-ling village
Kao-t'i village
Ta-p'ing village
Hsiao-mei village

The others in the other two districts, Lo-tung and Pai-sha, are now known.

What is the total Miao population in Hainan? At the present time there are no statistical data to contribute to our inquiry. As an alternative we shall attempt to find it by three different means. First, we shall attempt to trace the original number of Miao troops who were moved there from Kwangsi. Wang Tso states in his Record of the Suppression of the Li Uprisings /see above/ that "the central army was commanded by Lieutenant Colonel Ma Ch'eng, who ordered 10,000 of the han-ta troops and Lang-t'u soldiers of Kwangtung and Kwangsi to attack the central stronghold." In his Memorial Concerning the Suppression of the Li Uprisings, Cheng T'ing-ku also says:

C /104 cont./
175 month Tuan Wen reached Chen-ch'i, established the Military
631 Station Office, and inaugurated the system, dividing 124 native
563 villages into ten li, making Yang Erh, the main leader, a
M pe fu ch'ang /head of hundred men/. The other 132 villages
*175 /105/ became a local army 'to protect the city moats.' When
631 there were uprisings then they would be called to service; when
*648 conditions were peaceful then they would disperse as civilians.
C Hence the name, Military and Civilian Office" Chen-ch'i then
[701] is modern Suo-li, which is 20 li northeast of Kan-ch'eng hsien's main city.

Yung-sui was formerly under the jurisdiction of the native headman of Pao-ching, and Liu-li in it was also under the jurisdiction of Kan-chou. In the seventh year of Yung Cheng /1729/, the provincial governor Chao Hung-en and Wang Jou of Ch'en-yüan-ching tao pacified the uncivilized Miao at Liu-li and established a city at Chi-to-p'ing, called Yung-sui. (1)

1. Feng-huang T'ing Chih,
Vol. 1.

C Ku-chang /hsien/ in the Ming period was the territory
[701] under the control of the three senior officials at Shin-tung-ch'i, Pe-ya-tung, and T'ien-chia-tung, under the jurisdiction of the military and civilian pacification commissioner's office at Yung-sui.

Pao-ching was formerly the territory under the control of the Pao-ching pacification commissioner.

M After the five hsien in the Miao frontier region were
[634] opened, from the Yuan and Ming dynasties to the beginning of the Ch'ing dynasty, they were under the control of native headmen. During the K'ang Hsi reign period of the early Ch'ing /1662-1722/, a gradual change was begun from native headmen to regular government officials. In the forty-sixth year of K'ang Hsi /1707/, the senior official /ch'ang kuan szu/ at Wu-chai, T'ien Hung-t'ien, being harsh and cruel, the provincial governor, Chao Shen-ch'iao, sent up a memorial

/41 cont./

634 About twenty villages were under the jurisdiction of each great chief. He himself was elected for life by the plenary assembly of all the arms-bearing men of those villages over [666] which he was to rule. All the men over 16-17 years of age had the right to vote; women were excluded from voting.

It was left to each village to decide which great chief it wished to be under. If, therefore, after the death of a great chief who had ruled over twenty villages, twelve villages voted for one great chief and the remaining eight villages for another, two great chiefs were elected, and each one ruled over those villages that had elected him. As a consequence, after the death of each great chief the administrative unit changed, though this did not necessarily bring about a reduction in the size of the administrative units in the course of time, for every village wanted to be under the most powerful neighboring great chief.

634 687 There was an exception to the lifetime tenure of the great chief in case he was guilty of grave negligence. The village chiefs then convoked a new plenary assembly, which elected a new great chief. In any event, the election of the great chief took place in the largest village of the administrative district of the deceased or deposed great chief.

634 622 681 The great chief had to appoint the village chiefs. Moreover, he was the judge in all important affairs. If he meted out fines, the money involved was distributed according to the following system: the first part was distributed in equal shares to the arms-bearing men within his district. The second part was double the amount of the first and was distributed in equal shares to the village chiefs. The third part, three times the amount of the first part, went to the great chief and constituted an important source of income for him. He derived additional income from the tax which had to be paid once a year and amounted to four piasters (equivalent to about one mark) per person and one piaster for each rice field. The great chief could use the money as he saw fit.

634 [681] [651]

/42/

634 In order to have his orders carried out, the great chief had
701 at his command all the arms-bearing men in his administrative district, but he was not permitted to abuse his power of command in such a way as to prevent his subjects from earning their livelihood.

622 As has been mentioned, the great chief appointed the
634 village chiefs (šǎu pǎ) in the villages under his jurisdiction. Like him, they were appointed for life unless they committed a grave offense. In such cases, the arms-bearing men of the
[692] village brought their complaints against their village chief to
[687] the great chief. The latter investigated the case and appointed another village chief if he felt that there was sufficient justification.

[692] The village chief was, first of all, the judge in all minor
[651] matters. Moreover, he had to collect the taxes for the great chief and see to it that the great chief's orders were carried out. Parallel to the authority of the great chief, the village
[701] chief had at his disposal the arms-bearing men in his village, to whom he gave corresponding orders. Naturally, therefore, the same limitations applied to him as to the great chief.

622 The great chief had four or five officials at his disposal;
624 the village chief had one official. The orders were first of all
634 conveyed to them, and they were called upon for any task that their superior assigned to them. They were paid either by the great chief or by the village chief, depending on who their superior was, from his own pocket. There were no other officials in the true sense of the word.

622 The village chief's income consisted of his share of the
634 aforementioned fines meted out by the great chief, also the
681 fines that the village chief himself imposed in minor cases, and the minor services that the men and women of his village performed voluntarily.

c) Popular Assembly

623 The popular assembly has special importance among the
634 Meau. There are two kinds of popular assemblies.

/42 cont./

623 The assembly of all the arms-bearing men of a village /43/ is usually convoked by the village chief in all cases pertaining to the welfare of the village. Such cases are: the laying out of rice fields, the selection of a settlement site in the relocation of villages, communal hunts, and the like. The [666] majority vote decides the issue. The popular assembly, how- [634] ever, may be convoked even against the will of the village chief if the villagers want to file a complaint against their village chief with the great chief. In this case the assembly convenes upon the initiative of the village elders.

634 The popular assembly of all arms-bearing men within the administrative district of a great chief had far greater power. It met only when needed; its decisions had to be unamimous. It was convoked by the great chief in order to pass resolutions about important matters. Such important [721] matters were decisions about war and peace and measures to [796] be taken to celebrate the festival of the New Year or the harvest festival. The resolutions passed by the popular assembly of the great chief were of an advisory nature, for the great chief was under no obligation to comply with them. Actually, of course, he avoided acting against the voice of his people. In one case, however, the great chief was absolutely bound to accept the decision of the popular assembly: when the latter [692] had decided on his removal. The great popular assembly was, at the same time, a court of appeal for verdicts of the great chief, and its decisions were regarded as irrevocable.

634 The expenses of a popular assembly had to be paid by the 693 person who summoned it, hence either by the great chief himself or the party who had moved that it be convened. Among the expenses there were the provisions for all the assembly-participants at the place of the meeting, but no compensation was given for the journey to and fro. Moreover, in connection with minor cases, two chickens and plenty of alcohol were collected for the great chief and the elders; in connection with major affairs, one or more pigs.

/43 cont./

634 695 I shall now give a description of such a popular assembly, as I wrote it down according to the stories of the Meau.

The great chief lived in a house that was distinguished, [342] not by its type of construction, but by its special size and beautiful appointments, /44/ from all the other houses in the village. From here he had issued the order through his officials for the popular assembly to convene. On the day of the assembly, the great chief took his place on a stool in the hall of [516] his house. A few steps away from him the chiefs and village elders subordinate to him sat on their heels in a semicircle. All of these men had to be distinguished by an immaculate record, and not every head of a large family was considered worthy of this honor, no matter how old he was. The rest of the men squatted at a proper distance from these dignitaries, and those who could not find any space in the house itself squatted in a dense crowd on the open place in front of the [276] house. Everybody smoked tobacco in large wooden pipes.

The great chief, distinguished by a broad black sash and [292] sleeve trimmings of the same color, remained seated as he opened the meeting by stating the facts of the case in a loud voice. Next he got up and went to the altar. Here he sacri- [782] ficed either chickens or one or several pigs, depending on the importance of the issue before the assembly to the god of heaven and asked the latter to help him with his decision. Then he returned to his seat, sat down, and directed a question to one of the chiefs or village elders. The man addressed jumped up and answered. Sometimes, however, one of the elders would address one of the men in the crowd, perhaps a fellow-villager who was familiar with the issue under discussion. Then this man would jump up and not sit down again until he had given his answer. Finally, when everything was clear, the great chief gave his decision and asked those present to return to their villages. This brought the assembly to a close, and everybody relished the food that had been provided.

39: Bernatzik--321 E-5 (1936-1937) 1947 AO1 Thailand
Miao AE5

Chapter 12

Law and the Administration of Justice

a) Property Law

423 [643] [634] [622] [596] [184] Among the Meau uncultivated land formerly belonged to the king, later to the great chief, and today to the village chiefs. Cultivated land belongs to the person who has planted or inherited it, that is to say, to the head of the large /extended/ family in question. Conditions seem to be the same in Tonkin, since both Lajonquière (1) and Abadie (2) confirm my observations.

1. II, pp. 319 and 320.

2. Page 164.

The latter points out that among the Meau who live near irrigated rice fields or especially fertile soil the property rights over landed property are precisely established. The land belongs to the person [428] who cultivates and manages it, and it is transferred by hereditary transmission.

423 622 628 The situation regarding landed property among the Meau in Thailand is regulated in a very practical way. Every village chief is free to take possession of uninhabited land, into which he moves. If another village is already present in the territory concerned, permission must be obtained from the village chief there, who, by his mere presence, originally took possession of the land. If there is enough cultivable land for all the parties, this permission is always granted in practice. No special fee or rent has to be paid.

423 596 622 Accordingly, the head of every large /extended/ family is free to cultivate the untilled land lying in the vicinity of the village, which, as such, belongs to the village chief, without the special permission of the latter.

/246 cont./
428 blood relatives, as well as adopted brothers, receive no share
[597] in the inheritance as long as the direct heirs named are present.
Aside from possible fees, if the shaman has been asked to
[756] officiate at the burial, he, as well as the village chief, formerly
[622] the great chief, receives none of the estate. The distribution
[634] of the estate takes place under the supervision of the principal
heir, who also receives the clothing of his deceased father.
Even if there are no sons, but daughters are present, they
[562] are still excluded from the inheritance. In this case, the
[596] oldest brother of the deceased moves into his house as the chief
heir and new head of the large family, takes over all the prop-
erty of the deceased, and provides for the girls as though he
were the only son. In practice this situation probably never
[597] happens, for the head of a large family to whom daughters were
born, but not sons would have adopted a boy in time. The
latter would then marry one of the daughters and become the
sole heir. /247/ Dhuraratsadorn (1) reports in a similar vein:

428
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1. Page 169.

"Girls receive nothing, unless the deceased is survived exclusively by unmarried daughters. If the deceased is survived only by married daughters, all of whom have left the paternal home, they inherit nothing at all, and the estate passes to the closest
[597] male relative. An exception is made if a woman and her husband live under one roof with her parents (adoption). In this case the estate is divided between her and the son of the deceased. Her husband cannot inherit from his parents, since he has given up all ties of kinship with his natural parents."

428 The situation is similar in case of childlessness. In such
[597] cases, too, the man would long before have adopted one or probably several boys, who would have the same rights as natural sons. If a Meau should die after he has lost all his sons,
[596] which may happen in epidemics, the oldest brother of the
[764] deceased becomes the principal heir, who moves into the house
[589] of the deceased, takes care of the funeral, and with whom the widows remain as a rule. Nevertheless, in this, as in every other

/250 cont./

683 754 Since the Meau do not believe that black magic is practiced among their tribesmen, there is no punishment for it. Outlawing is likewise unknown.

692 622 634 [689] Offenses against custom are judged by the village chief or the great chief. Crimes, which very rarely occur among the Meau, are judged by the great chief. In such cases the village elders and the village chief appear as examining magistrates.

Dhuraratsadorn (1), too, points out that homicide and

674 114

1. Page 171.

crimes of violence are for the most part unknown within the family community, which he designates erroneously as "clan." He assumes that robbery might occur if it becomes known that a member of the community has received a large sum of money through the sale of opium or the like. The author then continues by saying that this offense had never occurred in the district of San Mahapon with which he is familiar, but characteristically he explains this not on the basis of the morality of the Meau, but by their custom of not carrying any money with them, [454] much less keeping it in their houses, but of carefully hiding it somewhere. I was unable to confirm the custom of "money-hiding" among the Meau, but I did find it among the Lahu; hence I assume that there is some confusion on the part of the author.

682 The punishment for murder in connection with robbery or homicide is execution. It is reported of some Meau tribes in China (2) that buffalo were paid as a fine for homicide. Only [634]

2. Eberhard, II, p. 252.

685 439 the great chief, however, can give the sentence. The same punishment befalls anyone who commits simple robbery or theft from traveling merchants. The harsh appraisal of this offense goes back to the fact that the traveling merchants, all of them Chinese, bring wares that are important to the Meau, but those areas in which there is danger of robbery and theft would be avoided.

/254 cont./

692 Capital crimes, as well as civil cases in which the defeated
695 has lodged an appeal, are decided incontestably by the great chief.
[634] The appeals are therefore as follows: an appeal against the
[622] verdict of the village elder goes to the village chief and one against the latter goes to the great chief. In special cases the verdict of the great chief can be appealed to the popular assembly, as has already been set forth in the chapter on "Political Organization," the section, "The Popular Assembly."

695 There is no appeal against the verdict of the popular
756 assembly. In ambiguous cases the judge turns to the shaman
[634] and instructs him to arrange for ordeals /Ordale/. Such ordeals take place before the popular assembly; they also play a role in criminal law. For example, the following ordeal is customary for the conviction of a criminal. The shaman makes a large carrying basket of split bamboo, which he covers with the clothing of a man. Next he looks among the girls of the village for two virgins, and, to make certain that all necessary conditions for the aims of the ordeal are actually fulfilled, he prefers to select two girls who are still immature and who must hold the basket on two sides. Then /255/ the accused burns several pieces of spirit-money and begs the high Father-Mother spirit to appear and make known the truth. As soon as the basket begins to sway, it is assumed that the high spirit has arrived. With a loud voice the accused now asks whether the high spirit has arrived, and it is assumed that the spirit is in the basket and is influencing the actions of the girls as soon as the covered basket again begins to sway. Next the shaman calls the names of all the suspects, one after the other. If the basket sways when one of the names is mentioned, the question is repeated two more times. If the basket is seen to move again, the culprit is regarded as convicted. If he nevertheless continues to deny his guilt, the shaman asks the girls to point out the culprit. If they now tap him on the shoulder, his guilt is regarded as proved.

/255 cont./

695 [634] An ordeal that a great chief had arranged was described to me as follows. The great chief puts some weapons into water to which has been added the blood of a sacrificed chicken and some alcohol. He now conjures up the high Father-Mother spirit and asks him to destroy the liar within a month. All the suspects must then drink some of the liquid. Whoever dies during this period or is otherwise afflicted by severe misfortune is regarded as guilty.

Poison or fire ordeals, on the other hand, are not used and are unknown, as are duels.

A criminal who in the opinion of the judge has been found guilty but nevertheless denies his guilt is tortured in harsher and harsher fashion. To begin with, his fingers are squeezed into an iron fork and the fork is then heated over an open fire. If the accused continues to deny his guilt, the palms of his hands are burned with red-hot iron. At the conclusion of the torture a piece of each ear and the little finger of the hand with which the crime was committed are cut off.

696 [634] [693] The sentences are executed by the men who stand at the disposal of the village chief or the great chief, four or five of whom are assigned to the great chief and one to the village chief (see also the chapter, "Political Organization," section, "Kingship and Chieftainship").

693 695 The costs of a lawsuit are borne by the guilty. They can be considerable if a popular assembly was convened, since the expenses for it must be defrayed /256/ (see the chapter, "Political Organization," the section, "Popular Assembly"). The plaintiff has to bear all the costs until the culprit is discovered. If he cannot pay them at once, they are treated like a debt assumed by him. If, in spite of all efforts, the person guilty of a crime cannot be discovered, the plaintiff, who in all sincerity cast suspicion upon the wrong person, does not pay the costs. They remain unpaid until the guilty person is discovered, for, as was pointed out, there is no time limitation on lawsuits, even though official investigations are discontinued after three years and discovery is left to chance.

/256 cont./

M 693 634 Besides the direct costs of the lawsuit, which at the least consist of the costs for food for all the persons involved in the case, there are for minor cases, two chickens and plenty of alcohol, and for major cases one or more pigs, which must be added for the great chief and the elders. Moreover, as soon as M 681 [634] the person is convicted or proved guilty, he has to pay the established fine, which is apportioned in accordance with a definite code, as soon as the decision is given by the great chief. Two-twelfths go to the arms-bearing men of the territory under the M [622] great chief; four-twelfths are distributed among the village chiefs of this territory, who use it chiefly to cover the expenses connected with their activities. They also use for this the smaller amounts which they impose independently in petty cases. M [634] The remaining six-twelfths, that is, half of the entire sum which the culprit has to pay, goes to the great chief alone and represents an important part of his income (see also the chapter, "Political Organization," the section, "Kingship and Chieftainship").

M 695 The verdict is given in accordance with definite judicial principles with which all the older men among the Meau are familiar, since this is a matter of customary law handed down for centuries.

M 673 When the verdict is given, a fundamental distinction is made between premeditation and negligence. Hence a deed is punished only if it was intentionally committed. Even for M [682] the negligent killing of a person, among the Meau the culprit is merely required to sacrifice a head of cattle for the soul of the dead.

A 692 622 693 /257/ As in almost all matters, the judicial procedure of the Akha also is considerably simpler and more primitive than that of the Meau. As has already been pointed out, the power of the village chief among the Akha is slight and cannot by any means be compared to that among the Meau. This is also apparent in the judicial procedure. Despite the fact that the Akha have no higher court, say, one comparable A [623] to the great chief of the Meau, beyond the office of the village chief, the village chief is not the supreme and therefore

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/394 cont./

702 868 Military drills do not take place, for every Meau learns as a child how to handle weapons, which also help to secure food, and the technique of warfare is relatively simple in the primeval forest and the difficult mountainous terrain of the region inhabited by the Meau. On the other hand, in case of 701 war, there follows a precise division of the army into districts, which are obliged to furnish riflemen, spear-bearers, and cross-bow archers, but no cavalry.

●[634] As soon as war threatens, every great chief (tsŭn kŏan) (see the chapter, "Political Organization") appoints a supreme commander-in-chief (tă lĕn tĕŭ), under whom stand the superior leaders (ŏu lĕn tĕŭ), to whom in turn is assigned a number of subordinate leaders (lĕn tĕŭ). Each subordinate leader commands three officers (tsŏu fŭ), each of whom is in command of 60 to 100 men. All of the supreme commanders-in-chief for their part are under the king as the supreme war-lord.

726 [202] Upon the order of the king, the army is called up by the tă lĕn tĕŭ, /395/ who send out messengers. Some Meau tribes seem to have also used signal drums (1). The rallying of the

1. Album Gotha, No. 81.

army followed within a few days or hours. As soon as the [714] messenger has arrived, the warriors take up their weapons and adorn themselves with the white turban as the emblem of war. [251] [484] In the meantime, the women pack some dry food for them which will serve as traveling provisions for several days, and the warriors immediately hasten as quickly as possible to the places designated as assembly points by the tă lĕn tĕŭ. If the messengers did not mention any points of assembly, the men gather in the village of the respective superior leader (ŏu lĕn tĕŭ).

[721] Every war is preceded by a formal declaration of war, to which the opponent replies in the same fashion. Among the Meau, the tă lĕn tĕŭ draw up the war plan. I could learn nothing about any special protection of the army while it is on the march. The army marches forward in small divisions in a broad front. This marching arrangement is in any case the

/395 cont./

726 most suitable in the difficult forested mountainous terrain inhabited by the Meau. In addition, an attempt is made to reach and occupy all the passes ahead of the opponent.

The war tactics of the Meau consist of surprise attacks from ambush, preferably during the night. At first only small sections of troops are sent out, while the numerically stronger reserves are held back. Single combats are unknown. If the
727 Meau are victorious, they chop off the head of every slain or
[634] captured opponent and send these trophies to their tsǔn kŏǎn, the great chief, who pays money for them. Thus, there are no war trophies in the true sense. No harm is done to the women and children of the enemies; they are respectively married or adopted by the warriors. Enemy property, too, is not
[613] [634] destroyed as a rule. The war booty is brought to the king, or lacking such a one, to the great chief for distribution among the warriors of his district.

726 Usually the battles are not as bloody as one might assume from the description. The fleeing enemy can soon escape his pursuers in the primeval forest, and the women and children immediately left their villages with /396/ all their movable property as soon as the spies reported the approach of enemy troops.

721 The purpose of war today among the Meau is exclusively to protect their own living space. Since as far back as the memory of man they have been in a defensive position in relation to their
[166] powerful neighbors, and since their constant migration southward is closely related to their search for such a safe living space, it is no longer possible to ascertain whether before that time other grounds for war were decisive. In any case the principle of only fighting tribal enemies prevails, whereas nothing is reported about wars between Meau tribes.

728 In the same way that an official declaration of war precedes the battles, war is also ended only by an appropriate ceremony. The opponents meet without weapons, eat a meal together, and declare that they want to be friends from now on. The Meau are also familiar with the truce, however, which